BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2002-66-C - ORDER NO. 2002-482

JUNE 21, 2002

IN RE: Petition of HTC Communications, Inc. for Arbitration of an Interconnection Agreement with Verizon South, Inc.	)	ORDER ON MOTIONS FOR RECONSIDERATION AND CLARIFICATION

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of a Petition for Reconsideration from HTC Communications, Inc. (HTC) filed with the Commission on June 19, 2002 and by way of a Motion for Reconsideration and Clarification from Verizon South, Inc. (Verizon) filed with the Commission on June 19, 2002. On June 12, 2002, the Commission issued Order No. 2002-450 which disposed of a Petition for Arbitration filed by HTC Communications, Inc. for arbitration of certain issues pertaining to the terms and conditions of a new interconnection agreement between HTC and Verizon. HTC and Verizon were hand-delivered a copy of Commission Order No. 2002-450 on June 14, 2002.

HTC'S PETITION FOR RECONSIDERATION OF ORDER NO. 2002-450

Issue 1: Outside Documents

Regarding Issue Number One, HTC requests clarification of the Commission's decision with respect to its impact on pricing. It appears from the Petition that HTC is concerned with Verizon's practice of imposing unilaterally-developed additional charges on HTC. According to HTC, the Commission's Order does not appear to address HTC's

concern that Verizon has imposed upon HTC additional rates and charges that were neither contained in the agreement nor negotiated. HTC requests that the Commission clarify its decision on Issue Number One in Order Number 2002-450 with respect to other types of outside documents to clarify that the decision relates to procedures and processes only, and not to rates or pricing. In the alternative, HTC requests that the Commission include this issue for discussion in the generic docket to be established by the Commission to address pricing issues.

Upon consideration of HTC's request, we agree with the requested clarification. Therefore, we hereby clarify our decision regarding Issue Number One in Order Number 2002-450 by stating that our decision in Order Number 2002-450 applies to procedures and processes only and that pricing issues will be included in the generic docket to be held in the future. In the interim, HTC and Verizon shall use pricing from the GTE South, Inc./AT&T interconnection agreement on file with the Commission.

Issue 10: Intercept Announcement

HTC requests that the Commission clarify or reconsider its decision on intercept announcements to the extent that the Commission's Order implies that Verizon is not required to provide intercept announcements for competing carriers. HTC asserts that it has not asked Verizon to unbundle the intercept announcement, but HTC argues that intercept announcements are a necessary and integral component of the service HTC is purchasing from Verizon, whether that service is an unbundled loop or a resold loop. Furthermore, HTC argues that intercept announcements are essential to customers changing numbers and, therefore, to the provision of competitive telecommunications

service. Moreover, HTC asserts that if Order Number 2002-450 is not clarified, the Commission's implication that incumbent local exchange carriers may not be required to provide intercept announcements for competing carriers would effectively impede competition.

We hereby clarify Order Number 2002-450 by noting that Verizon is to provide intercept announcements or referral announcements at parity with the service that Verizon provides to its own customers and to other carriers. By its Petition for Arbitration, HTC had requested extended times for the referral announcements. In Order No. 2002-450, we denied HTC's requested extended time periods for referral announcements. Verizon is only required to offer and provide the referral announcements at parity with what Verizon offers its own customers.

Issue 14: UNE Availability

Regarding Issue Number 14, HTC asks the Commission to clarify the language requiring HTC and Verizon to include in the Agreement the sentence: "Verizon does not have to reconfigure its network to provide unbundled network elements to HTC." In the Commission's Directive on this issue this sentence was preceded by another sentence that provided context for the issue. HTC asserts that the omitted sentence should be included. Additionally, HTC also argues that because the term "reconfigure" is not defined and can be subject to different interpretations, HTC requests that the language "except as otherwise provided herein" be added in order to prevent confusion and potential conflict.

After considering HTC's request for clarification, the Commission finds that the paragraph immediately preceding Issue Number 17 on page 52 of Order Number 2002-

450 should hereby be clarified to read: "HTC and Verizon shall also incorporate language in the interconnection agreement which states the following: Adoption of this language in no way gives HTC the ability to mandate the manner in which Verizon South, Inc. constructs or configures its telecommunications network. Verizon does not have to reconfigure its network to provide unbundled network elements to HTC."

Issue 18: Transport Payments

HTC argues that in Order Number 2002-450, the Commission was concerned about being consistent with its determination in a prior arbitration proceeding that competitive local exchange carriers should be responsible for paying for the facilities necessary to carry calls from distant local calling areas to a single Point of Interconnection (POI). According to HTC, the Commission did not take into account the fact that, under the language of Verizon's proposed agreement, there are multiple POIs, referred to by Verizon as Points of Connection (POCs) and Interconnection Points (IPs). HTC also asserts that under the proposed agreement, Verizon, not HTC, chooses where those POIs will be. The Petition indicates that HTC has asked only that Verizon share proportionately and equitably in the transport costs that are necessitated by Verizon's choice to have multiple POIs and by Verizon's choice as to the locations of those POIs. Further, HTC asserts that Verizon's proposed language requires HTC to establish an IP in each of Verizon's local calling areas.

First, HTC requests that the Commission reconsider Issue Number 18 and adopt HTC's language on this point. In the alternative, HTC requests that the Commission order Verizon to modify the language of the proposed agreement to allow HTC to select a

single POI within Verizon's local calling area (i.e., the POC, IP, and POI are all the same point, and each party is responsible for transport to that single POI).

We deny HTC's request for reconsideration of Issue Number 18. However, we clarify our previous Order to reflect that HTC, as the CLEC, selects where the POI will be located, and that HTC, as the CLEC or the cost causer, must pay for transport of traffic to that POI.

Issue Number 21: Transition of Service

Regarding Issue 21, according to HTC, the Commission's Order appears to be primarily concerned with those situations where transition of service is necessitated by a Federal Communications Commission or court directive. HTC seeks clarification on two points. HTC asserts Verizon should not be permitted to charge conversion fees in such cases that exceed the amount needed for Verizon to recover its additional costs associated with the conversion. Second, HTC asserts that Verizon should only be permitted to recover costs when the conversion is imposed upon Verizon because of a change of law and that Verizon should not be permitted to charge a conversion fee when it voluntarily chooses to discontinue a particular UNE and provide an equivalent service under non-UNE terms.

We adopt HTC's language regarding clarification of Order Number 2002-450. HTC's request for clarification is granted. Verizon shall not be permitted to charge conversion fees in such cases that exceed the amount needed for Verizon to recover its additional costs associated with the conversion. Additionally, Verizon is only permitted

to recover costs when the conversion is imposed upon Verizon because of a change of law.

Issue 24: Loop Pre-Qualification

With regard to loop pre-qualification, HTC argues that the Commission did not address HTC's contention that it should not be required to request pre-qualification for every loop it orders. HTC asserts that pre-qualification is not necessary in every case and can cause unnecessary delay for analog orders. Therefore, HTC requests that the Commission find that pre-qualification of loops is needed only for digital orders.

We grant in part HTC's request for clarification and find that pre-qualification of loops is required only for digital orders. Order Number 2002-450 is hereby clarified to state that pre-qualification is not necessary in every case, and therefore, pre-qualification of loops is needed only for digital orders.

VERIZON'S MOTION FOR RECONSIDERATION AND CLARIFICATION

Issue 2: Changes in Law

Verizon argues the Commission incorrectly struck Verizon's proposed language with regard to current legal requirements. Furthermore, Verizon asserts that the stricken language, appearing in Section 50 of the Agreement, addressed Verizon's reservation of its right to discontinue services that applicable law does not currently require Verizon to provide. Verizon requests that the Commission clarify its Order by stating Verizon shall not be required to provide services that applicable law does not require Verizon to provide. In Verizon's opinion, Section 50 makes clear that to the extent the Agreement

requires Verizon to provide any services that Verizon is not required to provide, Verizon is not agreeing to provide those services indefinitely, and it has a right to discontinue them. Additionally, Verizon's proposed language provides that if Verizon discontinues a service, it will do so upon proper notice to HTC.

We deny Verizon's request for reconsideration of Issue Number Two in regards to current legal requirements. The Parties can seek adequate legal advice during negotiations regarding the status of current law. Once the Parties execute a contract, the terms of the contract should be binding on the Parties. Verizon's proposed language amounts to an "escape clause" for negotiated terms contained in the agreement. It is not appropriate for this Commission to allow Verizon to "escape" from terms properly negotiated and included in the agreement.

Issue 14: UNE Availability

Regarding Issue Number Fourteen, Verizon states that the Commission's decision appears unduly broad, internally inconsistent, and at odds with the law and the facts. Further, Verizon argues that to the extent that the Commission's ruling may be construed to impose obligations upon Verizon that exceed those under the Act, then Verizon seeks clarification that this result was unintended.

First, Verizon states that the Commission concludes its ruling on Verizon's unbundling obligations by directing the parties to incorporate contract language making clear that "Verizon does not have to reconfigure its network to provide unbundled network elements to HTC." However, Verizon argues that the Commission should clarify its Order to state that unbundled access to be provided under the Agreement is

access only to Verizon's current network on the date such access is requested. Further, the Order should be clarified to state that Verizon shall not be required to construct facilities on HTC's behalf and that HTC shall not dictate to Verizon how to update its network. Additionally, Verizon asks that the Commission's clarification note that all unbundled access need only be provided in accordance with applicable law, including the necessary and impair standards stated in Section 251(d)(2) of the Act.

Next, Verizon requests that the Commission's ruling clarify that Verizon is entitled to just and reasonable compensation for the interconnection and network elements it provides to HTC. Verizon argues that its proposed Section 1.2, which the Commission rejected, was intended to stop a clever scheme that some CLECs have devised. According to Verizon, that scheme is for the CLEC to instruct a prospective customer to request service from Verizon, forcing Verizon to build a network to that customer in accordance with Verizon's obligation as a carrier of last resort. Thereafter, according to Verizon, once the network is constructed, the customer quickly switches over to the CLEC, leaving Verizon without an opportunity to recover the costs Verizon incurred to construct the network.

Consequently, Verizon argues that the Order appears to sanction this practice on the assumption that Verizon will not suffer financial harm because it will recover its costs of providing the new network through recurring and non-recurring charges charged first to the requesting customer and second to the requesting CLEC. Verizon states that this assumption is mistaken. In Verizon's opinion, the Commission should reverse its earlier decision and adopt Verizon's proposed Section 1.2. Verizon also states that the

Commission should make clear that HTC should not intentionally do through its customers that which HTC cannot do itself – that is, dictate to Verizon how Verizon constructs its network.

Verizon also argues that the Commission's ruling on Issue 14 can also be construed to violate the fundamental principle that CLECs are entitled to interconnection and unbundled access equal only in quality to that which an ILEC provides to itself. Verizon states that the Commission's decision seems to require Verizon to guarantee that the quality of the end product the CLEC provides to its customers is equal to that which the ILEC provides to its own. In Verizon's opinion, this is impossible, in practical terms, as well as inconsistent with the Act. Verizon states that this Commission should clarify that what the law requires is for Verizon to provide unbundled elements and network access equal to that which Verizon provides to itself. Further clarification should state that Verizon is not required to and cannot, in any event, ensure that the service the CLEC provides to its end user after having obtained equal network access is the same quality service which Verizon provides to its end users. Finally, Verizon asks the Order be clarified to state that Verizon shall provide network elements and access to network elements in accordance with the Act, but it shall not be required to guarantee the quality of HTC's services to HTC's end users.

Finally, Verizon states that the Commission, in adopting HTC's proposed Section 42.6, adopted contract language regarding notice of network changes without any regard to FCC Rules 51.325-335. According to the Motion, HTC's language creates a mandatory one-year notice period, however, the FCC's Rules provide for notice periods

shorter than even six months. Verizon argues that the FCC's Rules contain detailed policies and procedures applicable to all incumbent LECs, and Verizon requests that the Commission order that notice of network changes shall be provided in accordance with the FCC's Rules, rather than HTC's arbitrary and conflicting language of a mandatory one-year notice period for network changes.

Regarding clarification of the Commission's disposition of Issue Number Fourteen, the Commission did not intend to impose obligations upon Verizon that exceed those under the Act. First, we clarify the Order to state that unbundled access to be provided under the Agreement is access only to Verizon's current network on the date such access is requested. Verizon shall not be required to construct facilities on HTC's behalf, and HTC shall not dictate to Verizon how to update Verizon's network. Further, HTC nor HTC's customers shall dictate how Verizon constructs its networks. Further, all unbundled access need only be provided in accordance with applicable law, including the necessary and impair standards in Section 251(d)(2) of the Act.

Next, we clarify the Order to reflect that Verizon is required to provide unbundled elements and network access equal to that which Verizon provides to itself. Verizon is not required to and cannot ensure that the service the CLEC provides to its end user after having obtained equal network access is the same quality service which Verizon provides to its end users. Additionally, Order Number 2002-450 is clarified to state that Verizon shall provide network elements and access to network elements in accordance with the 1996 Act, but it shall not be required to guarantee the quality of HTC's services to HTC's

end users. HTC might eventually add its own equipment to network elements provided by Verizon over which Verizon has no control.

Finally, we reconsider our Order regarding notice of network changes and delete HTC's language which creates a mandatory one-year notice period. Notice of network changes shall be provided in accordance with the FCC's Rules. The Agreement shall be modified to include language that references FCC Rules 51.325 through 51.335 which provide for notice periods related to network changes.

Issue 24: Bell Atlantic Areas

Verizon states that the parties agree that Verizon's UNE loop offering will not differ between the former Bell Atlantic and former GTE service areas within South Carolina. Verizon argues, however, that the additional language in the Order to the effect that the contract will reflect that "HTC may order a 2-Wire Digital Loop in the former GTE Service Areas that provides capability the same as the 2-Wire HDSL-Compatible Loop that is available in the former Bell Atlantic Service Areas" is confusing. Verizon states it offers access to loops currently existing in its network. Verizon states that it does not, nor is it required to, guarantee the capabilities of any loops, much less the capabilities of loops across broad geographic territories. Verizon asks that the Commission clarify any confusion in this regard by modifying its Order to state that "HTC may order a 2-Wire Digital Loop where available in the former GTE Service Areas that provides similar capability as the 2-Wire HDSL-Compatible Loop that HTC may order where available in the former Bell Atlantic Service Areas with the understanding that the Ordering Codes may be different."

We deny the Company's request for reconsideration of Issue Number 24. During cross examination by HTC, Ms. Clayton testified as long as the appropriate coding was used to order the loop, the word "same" could be substituted for the word "similar". (TR. at 370-371. See, page 371 of the transcript wherein Ms. Clayton states, "As long as that appropriate coding were used, then yeah, I can substitute it.") We find that Ms. Clayton's statement regarding the substitution of the word "same" for the word "similar" was an admission on behalf of Verizon. Therefore, as our decision is clearly supported by the evidence in the record, we deny Verizon's request for reconsideration on this issue.

Issue 29: Subloop Availability

Verizon states that the Commission's decision to provision subloops within sixty calendar days from receipt of a bona fide order is inconsistent with the Commission's earlier decision to address time intervals for the provisioning of UNEs in a generic proceeding. With regards to the Commission's statement that Verizon is instructed to actively pursue the acquisition of rights-of-way, when needed, on a good faith basis, Verizon argues that the 1996 Act does not require a carrier to negotiate new rights-of-way on a competing carrier's behalf, as the Commission's language would appear to do. Verizon opines that HTC is perfectly capable of negotiating its own rights-of-way and that the Agreement requires each party to perform its obligations under Agreement in good faith. Verizon states that the Commission cannot, however, require Verizon to negotiate new rights-of-way on HTC's behalf, and the Commission should clarify that its Order does not require Verizon to do so.

Further, Verizon asks that the Commission clarify its order to state that Verizon is not required to provision UNE subloops within sixty days where circumstances beyond Verizon's control prevent it from doing so. Alternatively, the Commission should defer a ruling on UNE subloop intervals until the generic proceeding on other issues mentioned in the Order.

We clarify our Order to state that Verizon is not required to provision UNE subloops within sixty days where circumstances beyond Verizon's control prevent it from doing so. Further, the Commission recognizes that the Act does not require a carrier to negotiate new rights-of-way on a competing carrier's behalf. Therefore, the Order shall reflect that Verizon is not required to negotiate new rights-of-way on HTC's behalf.

Issues 9, 25, 26, and 28: Performance Measures

Verizon argues that the Commission ordered the parties to include, on an interim basis, performance measure language contained in the AT&T/GTE South, Inc. agreement; however, as the agreement was originally negotiated in 1996, its application is inappropriate in this docket. According to Verizon, the FCC has adopted its much more comprehensive carrier-to-carrier performance plan under which Verizon has begun operating. Furthermore, AT&T has not yet made a comprehensive effort to market CLEC services in the South Carolina market and as a result AT&T and GTE never implemented the AT&T/GTE performance plan. Additionally, the merger conditions pursuant to which the FCC performance plan was adopted direct that where a state commission adopts an alternate performance plan, the alternate plan may trump the FCC plan. Therefore, Verizon requests that the Commission revise its Order in this regard and

direct the parties to include in the final Agreement a statement reflecting that the FCC performance plan shall apply and at such time as the Commission concludes that an alternative plan is more appropriate it should then direct the parties to adopt language reflecting the alternate plan.

We deny Verizon's request to reconsider Issue Numbers 9, 25, 26, and 28. The agreement between AT&T and GTE South, Inc. was entered into in South Carolina and is approved for use in South Carolina. It has been AT&T and GTE's choice not to implement the performance plan between the two parties. We do not consider AT&T and GTE's nonimplementation of the performance plan an obstacle to HTC and Verizon including this performance measure language in their current agreement.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director

(SEAL)